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No. 03-918

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

CHEVY CHASE BANK, F.S.B., et al.,
Petitioners,

v.

DALE WELLS, et al.,
Respondents.

On Petition for a Writ of Certiorari to the Maryland Court of Appeals

BRIEF AMICI CURIAE OF AMERICA'S COMMUNITY BANKERS, CONNECTICUT BANKERS ASSOCIATION, MARYLAND BANKERS ASSOCIATION, NEW JERSEY LEAGUE OF COMMUNITY BANKERS AND NORTH CAROLINA BANKERS ASSOCIATION IN SUPPORT OF THE PETITIONERS

Benjamin R. Civiletti
John F. Cooney
(Counsel of Record)
Brock R. Landry
Venable, LLP
575 7th Street, N.W.
Washington, D.C.20004
(202) 344-4000
Counsel for Amici Curiae

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STATEMENT OF INTEREST OF AMICI CURIAE

Amicus America's Community Bankers is a national trade association representing the nation's community banks. ACB members, whose aggregate assets total more than $1 trillion, pursue entrepreneurial and service-oriented strategies in providing financial services to their customers and communities.[1]

Amicus Connecticut Bankers Association is an industry association representing over eighty banks that conduct banking operations in the State of Connecticut.

Amicus Maryland Bankers Association was formed in 1896 and has over 120 members, including the majority of Maryland and federally chartered commercial banks and federally chartered savings banks in Maryland. Its members provide a variety of financial services, including all types of lending, to consumers and businesses in Maryland.

Amicus New Jersey League of Community Bankers is a trade association that has represented New Jersey's savings and community bankers for more than 95 years. It is dedicated to promoting housing, finance and other financial services its members provide.

Amicus North Carolina Bankers Association is a trade association that provides North Carolina financial institutions with legislative liaison, educational and training

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[1] The parties have consented to the filing of this amicus brief. Pursuant to Supreme Court Rule 37.6, amici state that this brief was not authored or funded by any person or entity other than amici or their counsel.

programs, media relations, insurance benefits programs, and regulatory and compliance assistance.

The federal savings association members of each amicus institution are adversely affected by the decision of the Maryland Court of Appeals to read preempted state law into a loan agreement through a general choice of law clause.

SUMMARY OF ARGUMENT

This case presents a legal question of great significance for the nation's federally chartered savings associations -- whether their lending activities will be governed by uniform principles of federal law, as intended by Congress in enacting the Home Owners' Loan Act, and by the Office of Thrift Supervision ("OTS") when it issued an implementing rule that occupied the field of lending regulation; or by a patchwork of overlapping and inconsistent state laws, through a back door mechanism created by the court below that would allow preempted provisions of state law to be read into lending contracts through judicial construction of a choice of law clause.

The Maryland Court of Appeals has held that a choice of law clause in a lending agreement of a federal savings association, which referred generally to state laws that had been preempted by a federal regulation, might nonetheless constitute a voluntary commitment by the lender to comply with those laws. In reaching this conclusion, the Court of Appeals gave no regard to the strong federal interest that pervades regulation of lending by these institutions. Rather, it remanded the matter to the trial court for a determination whether, under ordinary common law principles governing interpretation of contracts, this choice

of law clause constituted an agreement by the federal savings association that it would be bound by the otherwise preempted state laws.

The decision below conflicts with *Fidelity Federal Sav. & Loan Ass'n v. De La Cuesta*, 458 U.S. 141 (1982), concerning the preemption of state laws by federal lending rules adopted pursuant to 12 U.S.C. § 1464(a).

The decision below presents significant operational and financial risks for federal savings associations. It threatens to destroy the preemptive effect of the OTS rule and to subject federal savings associations operating on an interstate basis to the divergent and conflicting lending laws of every state in which they do business. Congress, in adopting the Home Owners' Loan Act, 12 U.S.C. § 1462 et seq. ("HOLA"), and OTS, in adopting implementing rules, have long followed the principle that federal preemption of state lending laws is crucial to the safety and soundness of federal savings associations and to their ability to operate under a uniform set of best practices, thereby allowing them to deliver lending services to customers on an efficient, low-cost basis.

There is a substantial risk that, unless the decision below is reversed, the approach devised in this case will be adopted in other jurisdictions and that "interpretation" of choice of law clauses, which are ubiquitous, will become an accepted mechanism by which courts in other jurisdictions may read back into lending agreements of federal savings associations state laws that OTS has explicitly preempted.

By its logic, the decision below affects all forms of lending by federal savings associations, including credit

card, consumer, commercial, automobile and real estate lending, since virtually all lending agreements contain a choice of law clause. In all likelihood, the decision below also will affect other types of federally chartered financial institutions, such as national banks regulated by the Comptroller of the Currency, which also operate under federal rules that are intended to have broad preemptive effect on state laws regulating their lending.

In light of the substantial risks this decision presents to federally chartered financial institutions, the Court should grant the Petition at this time, prior to remand and without awaiting a decision of the trial court whether this particular choice of law clause incorporates Maryland's consumer protection laws into this credit card lending agreement. First, both in its analysis of the choice of law clause and its remand instructions to the trial court, the Maryland Court of Appeals ignored the regard that must be given the important federal interest involved in this area. Accordingly, the trial court's construction of the choice of law clause may be fatally compromised from the outset.

Second, there is an ongoing struggle between federal agencies and the states over whose rules should govern lending by federally chartered institutions operating in that state. If the decision below is not reviewed and reversed at this stage, there is a substantial risk that the mechanism created by the decision below will be adopted by other states and will undermine the uniformity of federal law governing the lending decisions of federal savings associations.

Accordingly, the Court should grant the Petition at this time and resolve the conflict between governing federal law and the decision of the Maryland Court of Appeals.

ARGUMENT

I. THE DECISION BELOW WILL HAVE SUBSTANTIAL ADVERSE EFFECTS ON FEDERAL SAVINGS ASSOCIATIONS AND WILL FRUSTRATE THE OPERATION OF THE UNIFORM NATIONAL LENDING RULES PROMULGATED BY OTS.

The decision of the Maryland Court of Appeals threatens great harm to Chevy Chase and other federal savings associations chartered by OTS under the HOLA.

Federal savings associations, with aggregate total assets of approximately $1.10 trillion, operate in all 50 states and lend to millions of consumers and small businesses. Federal savings associations offer a broad array of financial services to customers, including consumer, commercial and small business, automobile and real estate loans, as well as the credit card loans involved in this litigation. For example, in the area of housing finance, OTS-chartered institutions originated approximately 22% of all 1-4 family mortgage loans, according to the OTS' most recent data.

Federal savings associations, by Congressional design, are able to offer lending services to consumers efficiently and at lower cost than many other financial institutions, due to the nature of the unique federal charter under which they operate. Federal law is the exclusive source of the powers and authorities of these associations. Pursuant to longstanding Congressional policy, OTS seeks to assist consumers by providing federal savings associations with a charter that allows them to operate on an interstate

basis under a uniform set of rules, rather than under a patchwork of 50 separate legal regimes. In this manner, OTS carries out the goals of the HOLA, to facilitate the safe and sound operation of federal savings associations and to enable them to conduct their operations in accordance with the best lending practices in the United States.

Statutory Background. Section 5(a) of the HOLA, 12 U.S.C. § 1464(a) provides "for the organization, incorporation, examination, operation and regulation" of federal savings associations and for the issuance of "charters therefor, giving primary consideration of the best practices of thrift institutions in the United States."

In *Fidelity*, this Court held that state laws may be preempted by federal regulations issued pursuant to Section 1464(a), as long as the intent of the regulatory agency is clear. 458 U.S. at 153-154. Because lending "lies at the heart of the business of a federal thrift savings association, OTS and its predecessor the [Federal Home Loan Bank Board] have long taken the position that federal lending laws and regulations occupy the entire field of lending regulation for federal savings associations, leaving no room for state regulation." Final Rule: Lending and Investing, 61 Fed. Reg. 50951, 50965 (Sept. 30, 1996)(emphasis added).

In September 1996, OTS promulgated a final rule governing the lending activities of federal savings associations. One provision of that rule, 12 C.F.R. § 560.2(a), expressly provided for preemption of all state laws governing the extension of credit by federal savings associations, whether in the form of statutes, regulations or judicial decisions:

> To enhance safety and soundness and to enable federal savings associations to conduct their operations in accordance with best practices (by efficiently delivering low-cost credit to the public free from undue regulatory duplication and burden), OTS hereby occupies the entire field of lending regulation for federal savings associations. OTS intends to give federal savings associations maximum flexibility to exercise their lending powers in accordance with a uniform federal scheme of regulation. Accordingly, federal savings associations may extend credit as authorized under federal law, including this part, without regard to state laws purporting to regulate or otherwise affect their credit activities.

In the Preamble to this rule, OTS further explained that as a result of its occupation of the entire field of lending regulation for federal savings associations:

> [I]nstead of being subject to a hodgepodge of conflicting and overlapping state lending requirements, federal thrifts are free to originate loans under a single set of uniform federal laws and regulations. This furthers both the "best practices" and safety and soundness objectives of the HOLA by enabling federal thrifts to deliver low-cost credit to the public free from undue regulatory duplication and burden.

61 Fed. Reg. at 50965.

Efforts of States to Apply Their Laws to Federal Savings Associations. Markets for credits, deposits and

other financial products increasingly have an interstate or national dimension, and technological innovations have reduced the transaction costs and time required to make financial decisions. Federal savings associations have been able to keep pace with these developments through a charter that provides uniform national standards for lending decisions, regardless of where a customer is located.

Applying potentially inconsistent and conflicting state laws to federal savings associations would limit their ability to operate under uniform lending standards. At a minimum, application of inconsistent state laws would prevent federal savings associations from planning and operating their businesses, and managing their exposures, in a manner that diversifies risks and is in accordance with industry best practices.

Further, subjecting the lending decisions of federal savings associations to multiple overlapping and inconsistent state laws would raise transaction costs, create uncertainty about the conditions under which they can do business, and expose them to the costly litigation to determine which legal principles govern their obligations to geographically segmented groups of customers. For these reasons, in Section 1464(a), Congress gave OTS, and not the states, responsibility to determine the "best practices" for federal savings associations and to create nationally uniform rules.

In recent years, however, there has been a vigorous policy dispute over the substantive contents of federal financial institution charters, the powers such entities should have, and how the federal charter should operate compared to state-chartered institutions in the nation's "dual banking system." As part of this debate, there have been repeated

efforts by state and local governments to apply their laws to lending activities of federally chartered financial institutions that that operate within their borders. Prior efforts by the states, at earlier times in our history, to regulate the activities of federally chartered institutions constitute an important part of this Court's Supremacy Clause jurisprudence. *See, e.g., Barnett Bank of Marion County, N.A. v. Nelson,* 517 U.S. 25, 31-33 (1996)(summarizing cases that rejected efforts by states to restrict federally chartered financial institutions from exercising powers authorized by Congress); *McCulloch v. Maryland*, 17 U.S. 316 (1819) (application of state taxing authority to federally chartered bank).

For its part, OTS has promulgated rules that it believes will, together with "the elaborate network of federal borrower-protection statutes applicable to federal thrifts", will protect consumers on a "best practices" basis. 61 Fed. Reg. at 50965. State governments, however, have shown a preference for their local consumer protection measures and have been aggressive in seeking to develop mechanisms by which their laws might apply to federally chartered institutions, despite the broad preemptive effects of the federal law. These efforts have led to substantial litigation against federal savings associations. Defense of these cases has imposed significant transactions costs on these institutions.

Until the decision below, courts had consistently ruled that the scope of OTS regulation over federal savings associations is "so pervasive as to leave no room for state regulatory control." *E.g., Conference of Fed. Sav. & Loan Ass'ns v. Stein,* 604 F.2d 1256, 1260 (9th Cir. 1979), *aff'd* 445 U.S. 921 (1980). For example, in a recent decision involving the applicability of a California statute requiring

specific credit card minimum payment disclosures, the district court found that the HOLA and OTS regulations "holistically preempt" the state law. *American Bankers Ass'n v. Lockyer*, 239 F.Supp.2d 1000, 1020 (E.D. Cal. 2002).

Threats Presented by the Mechanism Devised by the Maryland Court. The Maryland Court of Appeals held that the direct application of Subtitle 9 of Title 12 of the Maryland Annotated Code to a federal savings association was preempted by operation of the OTS lending rule. The Court found that Subtitle 9 provided explicit directives for the regulation of revolving credit loans in the state.

> Because [these provisions] impact how credit grantors may operate and conduct their lending activities, which is inconsistent with OTS's expressed intention to "occupy the entire field of lending regulation for federal savings associations," any attempt to enforce these provisions as a matter of State law . . . must fail.

Wells v. Chevy Chase Bank, 377 Md. 197, 215 (Md. 2003).

The Court of Appeals nonetheless held that plaintiff's nearly identical breach of contract claim was not preempted, on the theory that the bank might have voluntarily agreed to comply with the requirements of Subtitle 9 by operation of the choice of law clause of the lending agreement. *Id.* at 224-225. The choice of law clause did not set forth any specific obligation to which the bank committed. Rather, it contained a general statement that defined the governing law for the contract as Subtitle 9 and applicable federal laws. Nonetheless, the Court of Appeals reversed the trial court's

ruling and remanded the matter for a determination whether, under the common law contract interpretation principles that govern in Maryland, this general choice of law clause had the effect of incorporating into the contract otherwise preempted provisions of Maryland law. *Id.* at 231-232.

This misuse of the choice of law clause by the Maryland Court of Appeals threatens to subject federal savings associations to the "hodgepodge of conflicting and overlapping state lending requirements" that OTS sought to avoid when it occupied the field of lending operations and authorized federal savings associations "to originate loans under a single set of uniform federal laws and regulations." 61 Fed. Reg. at 50965.

Choice of law clauses are found in virtually all lending contracts of federal savings associations, not just for credit card loans but also in agreements governing consumer, commercial, automobile and real estate loans. Inclusion of such a "horizontal" choice of law provision in a lending agreement is efficiency-enhancing for both lenders and borrowers. Such a clause identifies which state's background law will apply in the areas that OTS has not preempted and thus eliminates the credit risk and the expense and uncertainty of litigation over this issue.

The decision below threatens federal savings associations with substantial harm, by creating a back door mechanism through which preempted provisions of a state's law can be read back into a lending agreement, thereby defeating the preemptive effect of Section 560.2(a). OTS adopted this rule to facilitate the sound operation of federal savings associations and to enable them to conduct their operations in accordance with the best practices of

comparable institutions nationwide. The Court of Appeals' decision threatens the accomplishment of OTS's purposes.

First, although its effects are nominally confined to Maryland, the decision below threatens to have substantial consequences in all 50 States. Given the persistent efforts by the states to regulate institutions operating under a federal charter despite preemptive federal rules, it is highly likely that plaintiffs or state regulatory officials in other states will seize upon this mechanism and make similar arguments to courts in other jurisdictions that general choice of law clauses should be interpreted to read preempted state laws back into lending agreements.

Second, by its own logic, the decision below would apply to all types of lending services that federal savings associations offer, and not just the credit card loan plan at issue in this lawsuit. Since federal savings associations include choice of law clauses in agreements for virtually all their consumer, commercial and real estate loans, the decision below could have adverse effects on lending activities of federal savings associations in other areas as well.

Third, the decision below threatens to harm the operations of other federally chartered financial institutions, such as national banks, that operate pursuant to statutory and regulatory provisions that are intended to create a uniform national charter and broadly preempt state laws that would interfere with the accomplishment of the federal purpose.

II. THE DECISION OF THE MARYLAND COURT OF APPEALS IS INCONSISTENT WITH THE DECISIONS OF THIS COURT.

The Maryland Court of Appeals found that Subtitle 9 was preempted by the OTS rule and that this restrictive state law could not be applied directly to the credit card lending agreement at issue. *Wells*, 377 Md. at 214-215. The Court of Appeals found, however, that under *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995), the same provisions might be independently enforceable if the bank had voluntarily agreed in its lending agreement to be bound by those provisions. *Wells*, 377 Md. at 217-224.

The Court then pointed to the choice of law provision, which defined the governing law as "Subtitle 9 of Title 12 of the Commercial Law Article of the Maryland Annotated Code and applicable federal laws." (Pet. App. 47a). Without giving any regard to the federal interest that permeates the area of lending by federal savings association, the court interpreted this choice of law clause as creating an ambiguity whether the bank had voluntarily agreed to be bound by Subtitle 9.

The Court reversed the dismissal of the contract claim and remanded the matter to the trial court, to resolve this ambiguity and determine whether, under ordinary state canons of construction applicable to private contracts in areas not governed by a pervasive federal interest, the choice of law clause had the effect of incorporating the provisions of Subtitle 9 into the agreement.

The decision of the Maryland Court of Appeals is incorrect as a matter of law.

A. The Decision Below Conflicts with *Fidelity*.

The decision below is inconsistent with this Court's holding in *Fidelity Federal Sav. & Loan Ass'n v. De la Cuesta*, 458 U.S. 141 (1982). There, OTS's predecessor (the Federal Home Loan Bank Board) promulgated a regulation under 12 U.S.C. § 1464(a) that gave federal savings associations the right to include a due-on-sale clause in their home loan agreements. In the Preamble to that rule, the agency stated its intent that federal savings associations would not be bound by any state law that imposed different due-on-sale requirements. *Id.* at 147.

On appeal, this Court found that "[t]he broad language of [Section 1464(a)] expresses no limits on the [agency's] authority to regulate the lending practices of federal savings and loans" and that "the statutory language suggests that Congress expressly contemplated, and approved, the Board's promulgation of regulations superseding state law." *Id.* at 161-162. The Court also found that "Congress plainly envisioned that federal savings and loans would be governed by what the [agency] – not any particular state – deemed to be the "best practices." *Id.* at 161. The Court therefore held that the agency rule preempted an inconsistent California law restricting exercise of due-on-sale provisions.

In reaching this conclusion, the Court explicitly rejected an argument for application of state law based on a choice of law clause that had the same effects as the clause involved in this case. Two of the three deeds of trust at issue in *Fidelity* contained a provision which stated that the deed was to be governed by the "law of the jurisdiction" in which

the property was located. The plaintiffs argued that through this language, the lender voluntarily incorporated California contract law into the agreement, including its law restricting the exercise of a due-on-sale clause. The Court rejected this argument, however, on the ground that "the law of the jurisdiction" in which the property is located includes federal law as well as state law. 458 U.S. at 157 & n. 12.

> [T]he incorporation of state law does not signify the inapplicability of federal law, for "a fundamental principle in our system of complex national policy" mandates that "the Constitution, laws, and treaties of the United States are as much a part of the law of every State as its own local laws and Constitution."

458 U.S. at 157 (quoting *Hauenstein v. Lynham*, 100 U.S. 483, 490 (1880)).

Under the choice of law clause branch of *Fidelity*, the Maryland Court of Appeals erred in ruling that the mere reference to Subtitle 9 in the choice of law clause could have the effect of incorporating by reference this body of state law into the lending agreement. Here, the choice of law clause explicitly states that the agreement will be governed by federal law, as well as by Subtitle 9. The OTS rule that occupies the field of lending regulation for federal savings associations is one of the "applicable federal laws" that was incorporated into the agreement. Thus, as in *Fidelity*, the express incorporation of federal law into the agreement, through the choice of law clause, means that the state law is preempted.

This conclusion is consistent with OTS' interpretation of its lending rule. On October 6, 2003, the agency issued an

opinion letter concerning a choice of law provision in a loan document issued by a federal savings association, which invoked both federal law and the law of the place where the property is located (New York). OTS stated that the reference in the agreement to state law did not establish a contractual agreement to pay interest on escrow accounts as if the provisions of New York law were not preempted.

> The reference to federal law and state law in the same provision of the mortgage document includes the preemptive effect of federal law. In other words, Federal law continues to operate so as to preempt an impermissible state requirement. The reference to state law does not nullify or negate the preemptive effect of federal law.

OTS Opinion Letter P-2003-7 (Pet. App. 101a-108a).

B. In its Interpretation of the Lending Agreement, The Maryland Court of Appeals Erred by Ignoring the Critical Role of the Preemptive Federal Rule.

The Maryland Court of Appeals also erred by ignoring the principle that in construing a choice of law clause in an area that is governed by a dominant federal concern, the contract must be interpreted in a manner that gives proper regard to the federal interests at stake.

In determining that Subtitle 9 was preempted, the Court of Appeals correctly identified the predominant federal interest in governing lending by federal savings associations. However, it completely ignored this consideration in addressing the parallel breach of contract claim. On that

issue, in considering whether the choice of law clause introduced an ambiguity into the agreement, the Court of Appeals did not consider or give any weight whatsoever to the federal interest.

Further, the court below did not consider the federal interest in shaping its remand instructions. It simply stated that "[c]ontract interpretation, unlike the issue of federal preemption, is a matter of state law", 377 Md. at 224 & n.12, and that the issue "will require application of the familiar canons of construction" followed by Maryland law in reviewing private contracts, *id.* at 232.

In making these two determinations, the Court of Appeals erred by failing to give consideration to the federal interest. The governing rule is that when a court is called upon to interpret the choice of law clause in an agreement affecting an area in which there is a strong federal policy interest, due regard must be given to the federal policy; and any ambiguities as to the scope of the choice of law clause must be resolved in favor of the federal interest. This conclusion is set forth explicitly in *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 476 (1989), on which the court below relied (*Wells*, 377 Md. at 221, 224).

Volt involved a choice of law clause in the context of the Federal Arbitration Act -- a statute that (unlike the OTS rule) did not fully preempt state laws governing arbitrations. The Court there concluded that in interpreting the effect of a choice of law clause, "due regard must be given to the federal policy" involved. *Volt*, 489 U.S. at 476.

This principle is confirmed in *Mastrobuono v. Shearson, Lehman Hutton, Inc.*, 514 U.S. 52, 61 (1995), another case arising in the arbitration context. There, the Court held that an ambiguous choice of law clause does not incorporate state law into a private contract in an area of federal interest, because ambiguities must be resolved in favor of the federal policy. *See also Roadway Package Sys. Inc. v. Kayser*, 257 F.3d 287, 294-295 (3rd Cir.), *cert. denied*, 534 U.S. 1020 (2001).

The Court of Appeals completely ignored the *Volt* principle, even though dealing with a contract involving a "uniquely federalized financial institution[]" (61 Fed. Reg. at 50965), whose operations are regulated by a completely preemptive OTS lending rule designed to protect its safety and soundness and to assure that it follows what OTS – "not any particular state – deemed to be the best practices . . . " (*Fidelity*, 458 U.S. at 153-154). Under *Volt*, any alleged "ambiguity" in the choice of law clause should have been resolved in favor of the federal interest.

C. ***Wolens*** **Does Not Support the Decision Below.**

The Court of Appeals asserted that its decision was justified by *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995). That decision restated the preexisting principle that the courts may enforce a voluntary agreement by a party to be bound by certain contract provisions, even though a state would be preempted by federal law from imposing the same requirements on that party. However, *Wolens* does not justify the decision below.

Wolens did not involve a choice of law clause. The Court did not purport to consider whether state law could be

deemed to be incorporated wholesale into a contract through such a mechanism. To the contrary, the alleged obligations of the airline were affirmatively set forth in a clause in the contract. *Wolens* simply held that the federal statute at issue did not preclude state-law-based adjudication of a breach of contract claim, in which the meaning of a clause making an affirmative commitment would be determined by application of state contract interpretation principles.

III. REVIEW SHOULD BE GRANTED AT THIS TIME TO PREVENT THE SPREAD TO OTHER JURISDICTIONS OF THE MECHANISM TO AVOID FEDERAL LAW CREATED BY THE COURT BELOW.

It is important that the Court grant the Petition at this time, prior to remand and without awaiting a decision of the trial court whether, under common law principles of contract interpretation, this particular choice of law clause incorporates Maryland's consumer protection laws into this credit card lending agreement. If the decision below is not reviewed and reversed at this stage of the case, federal savings associations will suffer substantial and immediate harm.

First, the decision threatens to stimulate a wave of litigation in the courts of the 50 states, in which private plaintiffs and state attorneys general may seek to have preempted state laws read back into the contracts of federal savings associations through the choice of law clause mechanism devised in this case. If use of this mechanism is permitted to spread, federal savings associations may be required to defend against copycat breach of contract claims.

The risks and transaction costs of defending these lawsuits will deprive these associations of one of the important benefits of the uniform, defined rules that OTS sought to achieve by occupying the field.

Second, if the mechanism created below is allowed to flourish, then the de facto rules actually governing lending by a federal savings association will be determined, not by an OTS rule of general applicability, but by the results of case-by-case adjudications in various states under common law principles of contract interpretation. There is a substantial risk that the decisions in these state court cases would create the hodgepodge of inconsistent rules that OTS sought to avoid. Further, as a practical matter, these state court decisions may be largely impervious to federal judicial review, so that the possibility of appellate consideration at a later stage may not provide an adequate means for vindicating the uniformity of lending rules that OTS intended to create.

CONCLUSION

Amici submit that the Petition for a Writ of Certiorari should be granted.

Benjamin R. Civiletti
John F. Cooney
(Counsel of Record)
Brock R. Landry
Venable, LLP
575 7th Street, N.W.
Washington, D.C. 20004
(202) 344-4000
Counsel for Amici Curiae

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